In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY, AND LOUISIANA OIL REFINING CORPORATION. } No. 192.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

THE PLEADINGS.

The lands in controversy in this suit are lots 2 and 3 in the northwest fractional quarter of section 27, lot 2 containing 29.34 acres and lot 3, 36.43 acres, a total of 65.77 acres. These lots were surveyed by Kidder in 1916–17, the official plat of the survey being approved March 28, 1917. In its bill of complaint the United States alleged in brief that it was and still is the owner of these lots; that on December 15, 1908, the President withdrew from settlement and entry and from all other forms of

appropriation all of the public lands in certain designated townships, including the township in which this section lies; that on July 2, 1910, the President, under the act of June 25, 1910 (36 Stat. 847), ratified and continued in full force the previous withdrawal order; that notwithstanding, the defendants, without any valid right, in bad faith, took possession and drilled a well, from which oil was taken; that the oil was extracted under color of a pretended claim of ownership; and that none of the defendants has any right, title, or interest, etc. Appropriate relief was prayed for (5).

It will be unnecessary to refer separately to the various answers. It is enough to say that while the defendants admit taking possession and extracting the oil, they deny that the land belongs to the United States. On the contrary, they allege ownership under a patent to the fractional northwest quarter of section 27 (33). This patent apparently is not printed in the record, but it is frequently referred to and was treated by all parties as before the court (74, 80, 126, 197, 216). It is probably contained in the abstract of title which the defendants introduced (192) and which forms a part of the record on appeal (212). It is undisputed that the patent, which is based on the official survey, refers to the official plat of Warren's survey which was approved August 31, 1839 (126). The patent evidently embraces the fractional northwest quarter and the west half of the southwest quarter, the total acreage being 147.25 (197). According to Warren's

plat of survey, which was introduced in evidence, the southwest quarter contains 158.50 acres and the fractional northwest quarter 68 acres. The patent which was apparently issued to Greene on October 2, 1911 (80), therefore embraces approximately 79.25 acres, constituting the west half of the southwest quarter, and 68 acres in the fractional northwest quarter, these two areas producing 147.25 acres, the number apparently called for in the patent (197). As already stated, the acreage of lots 2 and 3, constituting the lands in controversy, amounts to 65.77 acres, lying in the fractional northwest quarter. Under a patent thus conveying the fractional northwest quarter, represented, according to the official survey, to contain 68 acres, the defendants assert title to the additional 65.77 acres which adjoin the 68 acres on the ground that the patent, based as it was on the plat of the official survey of 1839, operated to convey everything in the fractional northwest quarter, and therefore to pass title to the water's edge.

The master, to whom the case was referred, found in favor of the Government (42, 74). His report was confirmed (85) and a decree entered accordingly (89). The Circuit Court of Appeals reversed the decree and ordered the bill dismissed (215), whereupon an appeal was taken to this court (223).

THE FACTS.

This case was tried along with a similar case, *United States* v. *Enders et al.*, District Court No.

1160, involving title to certain lands in section 9, which it was also claimed by the Government were erroneously omitted from Warren's survey. The *Enders* case, however, is not before this court. At the trial of these consolidated cases a stipulation was entered into to the effect that the evidence introduced in the case of *United States* v. *Jeems Bayou Fishing & Hunting Club et al.* (No. 119 in this court) should be treated as a part of the record (105). With our brief in that case already before the court, where the facts are stated at length, it will be unnecessary to indulge in any repetition. It will only be necessary to refer to the additional facts developed on the trial of this suit.

Although the tract in controversy, which it is claimed by the Government was erroneously omitted from Warren's survey, embraces 65.77 acres, it forms a part of a larger tract, all of which it is claimed by the Government was erroneously omitted. This additional area consists of lot 1 (the Court of Appeals erroneously refers to it as lot 4) of section 27, comprising 14.13 acres; lot 1 of section 23, comprising 1.13 acres; and lot 2 of section 23, comprising 16.61 acres. In other words, the total area in this immediate locality omitted from the Warren survey is 97.64 acres. As indicated by the testimony in the *Jeems Bayou Fishing & Hunting Club* case (No. 119), the total area left out of the Warren survey was 988.77 acres. When Boyd resurveyed, in 1854, sections 31 and 32 he found that Warren had omitted

in those sections 90.41 acres; when Bristol surveyed, in 1871, certain lands in sections 4, 9, and 10 he found that Warren had omitted in those sections from his survey 280.12 acres; and when Kidder executed his survey in 1916–17 he found that Warren had omitted in various sections in the township another 617.21 acres. The 97.64 acres mentioned above form a part of the 617.21 acres which Kidder surveyed, the official plat of which was approved, as already stated, on March 28, 1917.

Coming, now, to Warren's so-called meander line across section 27, which we claim to be altogether erroneous, we find many interesting facts developed by the testimony, all of which demonstrate its incorrectness. The land in controversy reaches an elevation 37 feet higher than the 173.09 contour (117). The average height of the omitted land is about the same as that included in Warren's fractional northwest quarter, and there is not the slightest difference in the general character of the land lying on either side of Warren's traverse line (117). This meander line traverses upland throughout its entire course, and there is no place where it approaches the border of Ferry Lake (118). Its average elevation is 25 feet above the 173.09 contour (120). Warren began his traverse line at the meander corner on the eastern boundary of section 27 and terminated it on the western boundary of that section. On this line there are eight angle points, numbered 1 to 8, inclusive, marking the turning points. Angle points 7 and 8

are in the fractional northwest quarter (135). There is nothing on the ground to justify these turns. Angle points 7 and 8 are in the forest, at a high elevation above the lake, being in the vicinity of 27 feet above the lake level, and so far removed from the actual border of the lake that there is no occasion for making an angle point at either of these places (135). His traverse line at these two points is just an irregular line that might be run through the woods and does not agree with any topographical features of any kind. It does not follow the contour of the lake, nor does it mark the shore at all (136). Between angle points 7 and 8 the average distance to the border of Ferry Lake is about 1,000 feet (118). Along the seventh meander course the average distance to the lake is 1,100 feet, and the nearest distance of the meander line through the fractional northwest quarter to the lake is at a right angle 900 feet away (122). Although Kidder, as indicated on his plat of survey, found 15.26 acres in section 23, Warren's survey does not show any land in that section at all (125, 136).

His traverse line through the fractional northwest quarter can not be considered a correct meander line in the sense that it represents the border of Ferry Lake, and the line does not conform to any of the several requirements of a meander line as set forth in surveying rules. In running his traverse line at the elevation and in the direction in which he did, his survey is very much in error. His meander line

through section 27 is manifestly an error as determined by every test that can be given (124). His meander line through the fractional northwest quarter does not conform to surveying rules, nor does it mark the sinuosities of Ferry Lake (128). His meander line does not follow the contour, nor does it conform to the sinuosities of the shore line. It cuts across deep ravines nearly a quarter of a mile from the lake, and in no way can be construed to represent the meander line of Ferry Lake. If it was intended as a meander line of that lake, it is absolutely incorrect and the error manifest. There is nothing on ground itself that would have prevented Warren from running his line along the proper contour. In fact, it would have been easier to run along the proper contour than to cut across, as he did, the highland, through heavy timber and undergrowth (142). The length of his meander line in section 27, from angle point No. 5 (which is almost at the margin of the lake) to the meander corner on the west side of section 27 is 4,804.8 feet, approximately twelve-thirteenths of a mile (145), while the length of Kidder's meander line from angle point No. 9 (which is apparently about the same as angle point No. 5 just mentioned), through section 27 to the meander corner of that section on its west side, on the 173.09 contour, is 6,311.38 feet, or approximately 1¼ miles (146). Warren's meander line does not follow the shore (143) and is manifestly incorrect (161). It was run without reference to

the lake and is manifestly incorrect (169). This testimony came from several witnesses and the evidence was undisputed.

In this case, as well as in the other *Ferry Lake* cases, the question naturally arises as to how the elevation of the lake was determined when Louisiana was admitted to the Union in 1812 and when Warren surveyed in 1839. As indicated in the record in the *Jeems Bayou Fishing & Hunting Club* case (No. 119), Kidder found that Warren had terminated his *section* lines at the actual edge of the lake, which was the 173.09 contour. Kidder then placed posts all around the margin of Ferry Lake at this elevation, and the geologists and ecologists found from geological and ecological evidence that this was the elevation of the lake at that time. Inasmuch as this evidence is not disputed, it is unnecessary to refer to the testimony which establishes this fact.

Another significant fact which was developed in the testimony was that Greene himself, the patentee, treated his title under the patent as stopping at the traverse line as actually run by Warren, for he made mineral locations on ground lying between that traverse line and the actual edge of the lake. These mineral locations were introduced in evidence, one bearing date June 10, 1910, one June 17, 1910, and one January 22, 1913 (192). They are produced in full at pages 203–206. In referring to these mineral locations the master said that "Greene virtually acknowledged that this land was not his property. He made on January 22, 1913, a mineral location

embracing the fractional northwest quarter of section 27, between the traverse line and the lake. In this location the land is referred to as 'unsurveyed.' He did the same on June 17, 1910, 'for all lands below the United States traverse in NW. ¼ sec. 27.' No effort to develop the land under this location was made, but this instance shows he did not consider that he was the riparian owner of the area in dispute" (75).

The evidence with respect to the amount of oil taken out and its value was undisputed (190). A tabulated statement will be found at pages 194, 195. The Amateur Oil Company drilled the well and operated it from August 10, 1916, when it began to produce, until May 15, 1917. The oil taken out during this period amounted to $3,171.53, but the cost of drilling amounted to $6,194.78 and the cost of operating to $834. The Louisiana Oil Refining *Company* and the Louisiana Oil Refining *Corporation* operated the well from May 16 to December 31, 1917, the value of the oil taken being $1,485.17, and the cost of operation amounted to $741.74 (190). It was stipulated that the Louisiana Oil Refining Corporation, which was not made a party, would respond to any judgment which might be rendered without being made a formal party (191). A judgment was, however, rendered against it, and it joined in the appeal.

The District Court allowed the defendants credit for the cost of drilling and operating, and rendered judgment as shown at pages 90, 91, and decreed the property in question to belong to the United States.

ASSIGNMENTS OF ERROR.

It will be unnecessary to reproduce from the transcript the assignments of error (224). The Circuit Court of Appeals, having reversed the decree of the District Court and having ordered a dismissal of the bill, found it unnecessary to consider the measure of damages. The assignments in brief present two contentions:

1. That the Court of Appeals was wrong in adjudging the property in dispute to belong to the defendants; or, to state it in another form, in holding that the patent to Greene, embracing the fractional northwest quarter of section 27, containing 68 acres, according to the plat of survey, operated to pass title to the water's edge, thereby giving the patentee title to an additional 65.77 acres.

2. If the Court of Appeals was wrong in thus disposing of the case, then the District Court was wrong in allowing the defendants credit for the cost of drilling. Our assignments of error in the Court of Appeals took a broader scope, challenging, as they did, the action of the trial court in allowing the defendants credit for the cost both of *drilling* and of *operation*. In this court, however, we challenge the action of the District Court only in so far as it allowed the defendants credit for the cost of *drilling*.

ARGUMENT.

IN VIEW OF OUR BRIEFS IN THE OTHER FERRY LAKE CASES NOW BEFORE THE COURT, WHERE THE SAME QUESTION OF LAW IS INVOLVED, WE CONTENT OURSELVES WITH SAYING THAT THE EVIDENCE UNMISTAKABLY SHOWS THAT A FLAGRANT AND PALPABLE ERROR WAS COMMITTED BY WARREN IN HIS SURVEY OF 1839, ENTITLING THE GOVERNMENT, UNDER A LONG LINE OF AUTHORITIES, TO THE RELIEF WHICH IT SEEKS.

Horne v. *Smith*, 159 U. S. 40.
Niles v. *Cedar Point Club*, 175 U. S. 300.
French-Glenn Live Stock Co. v. *Springer*, 185 U. S. 47.
Security Land & Exploration Co. v. *Burns*, 193 U. S. 167.
Chapman & Dewey v. *St. Francis*, 232 U. S. 186.
Producers Oil Co. v. *Hanzen*, 238 U. S. 325.
Lee Wilson & Co. v. *United States*, 245 U. S. 24.

THE RULE IS OF COURSE UNDISPUTED THAT ORDINARILY A PATENT TO A FRACTIONAL SECTION BORDERING ON A NAVIGABLE STREAM PASSES TITLE TO THE WATER'S EDGE. BUT THIS COURT IN ANNOUNCING THIS VERY RULE HAS RECOGNIZED THAT IT NECESSARILY HAS ITS LIMITATIONS.

Railroad Co. v. *Schurmeir*, 7 Wall. 272.
Producers Oil Co. v. *Hanzen*, 238 U. S. 325.
Mitchell v. *Smale*, 140 U. S. 406.

In the last-named case the court says:

> We do not mean to say that in running a pretended meander line the surveyor may

> not make a plain and obvious mistake, or be guilty of a palpable fraud, in which case the Government would have the right to recall the survey and have it corrected by the courts, or in some other way. Cases have happened in which, by mistake, the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government.

But the court continued:

> In the present case it can not be seriously contended that any palpable mistake was made, or that any fraud was committed, by the surveyor who made the survey in 1834–5.

The undisputed testimony in this case, on the contrary, establishes, we submit, that a flagrant and palpable error was committed by Warren.

THIS COURT SEEMS TO BE COMMITTED TO THE DOCTRINE THAT A MEANDER LINE TO BE BINDING MUST REASONABLY APPROXIMATE THE SHORE LINE.

In *Gauthier* v. *Morrison*, 232 U. S. 452, this language is used:

> It will be perceived that we are not speaking of land which was covered by a permanent body of water at the time of the survey and thereafter was laid bare by a subsidence of the water, nor yet of comparatively small areas which sometimes lie within meander lines *reasonably approximating the shores of permanent bodies of water.*

This seems to be a plain recognition of the fact that the decisions of this court, in applying the general

rule already referred to that a stream and not a traverse line is the true boundary, as exemplified in the two leading cases of *Railroad Co.* v. *Schurmeir, supra*, and *Mitchell* v. *Smale, supra*, unmistakably proceed upon the theory that the traverse lines there under consideration did in fact *reasonably approximate the water's edge*. In these cases, however, the undisputed testimony establishes that Warren's so-called meander or traverse line in no sense reasonably approximates the water's edge.

THE FACT THAT IN MITCHELL v. SMALE, 140 U. S. 406, THIS COURT HELD THAT A PATENT EMBRACING A FRACTIONAL QUARTER CONTAINING ONLY 4.53 ACRES, NEVERTHELESS OPERATED TO PASS TITLE TO THE WATER'S EDGE AND THEREFORE TO INCLUDE AN ADDITIONAL 25 ACRES, SEEMS TO HAVE MEASURABLY INFLUENCED THE COURT OF APPEALS IN DECIDING AGAINST THE GOVERNMENT. IT IS SUBMITTED, HOWEVER, THAT CASES OF THIS SORT ARE NOT TO BE DECIDED ON A COMPARISON OF AREAS, BUT UPON THE FUNDAMENTAL PROPOSITION WHETHER THE MEANDER LINE REASONABLY CONFORMS TO THE MARGIN OF THE LAKE.

The later decision in *Producers Oil Co.* v. *Hanzen*, 238 U. S. 325, certainly does not proceed upon the theory that cases of this sort are to be determined merely by a comparison of areas. It affords no basis for the proposition that this court ever intended to lay down the rule that if the area erroneously omitted is no greater than approximately six times the area included, the patent carries title to the water's edge. In that case the area of lot 1,

which the patent embraced, was 12.84 acres. The area of the adjoining land in dispute was, according to one survey, 40 acres, and according to another, 87 acres. The discrepancy in acreage was a factor, along, of course, with others, which led this court to the conclusion that the patent did not pass title to the disputed tract. The whole reasoning in that case is inconsistent with the notion that the doctrine to be deduced from *Mitchell* v. *Smale* is that cases of this sort are to be determined by a comparison of areas. The only logical course which this court can take is, we submit, that cases of this sort are to be determined by the application of a simple test—whether the meander line reasonably approximates the margin of the lake. Besides, the field notes of *Mitchell* v. *Smale* affirmatively disclose that the surveyor was attempting to meander the lake.

THERE IS NO MERIT IN THE CONTENTION THAT THE GOVERNMENT IS ESTOPPED TO PROSECUTE THIS SUIT BY REASON OF THE LETTER WRITTEN BY THE COMMISSIONER OF THE GENERAL LAND OFFICE TO SENATOR BLANCHARD OR BY REASON OF THE LETTER OF THE DIRECTOR OF THE GEOLOGICAL SURVEY TO THE SECRETARY OF THE INTERIOR.

Utah Power & Light Co. v. *United States*, 243 U. S. 389.

Lee Wilson & Co. v. *United States*, 245 U. S. 24.

THE DEFENSE OF LACHES IS NOT AVAILABLE.

United States v. *New Orleans Pac. Ry. Co.*, 248 U. S. 507.

United States v. *Southern Pacific Co.*, Adv. Op., May 29, 1922.

THE DISTRICT COURT WAS WRONG IN ALLOWING THE DEFENDANTS CREDIT FOR THE COST OF DRILLING THE WELL.

As already indicated, the Government's assignments of error in the Court of Appeals assailed the action of the District Court in allowing the defendants credit for both the cost of *drilling* and of *operation*. The assignments of error in this court simply challenge the action of the District Court in allowing credit for the cost of *drilling*. Inasmuch as our brief in consolidated cases Nos. 117, 104, 111, 112, 113, 114, 115, and 116 goes at length into the question of the proper measure of damages, we think it unnecessary to repeat the argument here, particularly because some of the counsel appearing in those cases also appear here. The following cases sustain our contention:

United States v. *St. Anthony R. R. Co.*, 192 U. S. 524.

United States v. *Midway Northern Oil Co.*, 232 Fed. 619, 633.

United States v. *McCutchen*, 238 Fed. 575, 593, 594.

St. Clair v. *Cash Gold Min. & Mill. Co.*, 9 Colo. App. 235, 241; 47 Pac. 466, 468.

Hall v. *Abraham*, 44 Ore. 477, 481; 75 Pac. 882, 883.

Martin v. *Porter*, 5 Mees. & W. 351 (1839).
Morgan v. *Powell*, 3 Q. B. 278 (1842).
Llynvi Co. v. *Brogden*. L. R., 11 Eq. 188 (1870).

THE UNITED STATES, WITH RESPECT TO THE MEASURE OF DAMAGES, IS NOT BOUND BY STATE LAW OR DECISIONS.

It is well settled that the United States is not bound by State statutes of limitation; and if the Government sues and a balance is found in favor of the defendant, no judgment can be rendered against the United States either for that balance or for costs. *United States* v. *Thompson*, 98 U. S. 486.

It has also been held that the statute of a State requiring landowners to fence their lands does not apply to the United States; that the federal Constitution has delegated to Congress without limitation the power to dispose of and make all needful rules and regulations concerning the public domain; and that the exercise of that power can not be restricted or embarrassed in any degree by state legislation. *Shannon* v. *United States*, 160 Fed. 870. See also *Utah Power & Light Co.* v. *United States*, 243 U. S. 389.

Such being the law, no reason appears why the Government should be bound by such laws in fixing the measure of damages for trespasses on its public lands.

In *Woodenware Co.* v. *United States*, 106 U. S. 432, which lays down the rule governing the measure of damages in cases of trespass, it is said that in the

case of a willful trespass the trespasser is liable for the full value of the property taken without allowance for expenditures made by him. In that case the court said (p. 434):

> There seems to be no doubt that in the case of a willful trespass the rule as stated above is the law of damages both in England and in this country, though in some of the State courts the milder rule has been applied even in this class of cases. Such are some that are cited from Wisconsin.

It should be observed that the *Woodenware* case arose in Wisconsin, and this court referred to the milder rule in that state, which it did not see fit to follow but followed the rule prevailing generally in this country and in England.

The decree of the Court of Appeals, it is submitted, should be reversed.

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Sixteen (16) West, containing an aggregate of 65.77 acres, and alleging that the defendants, Charles J. Greene, Amateur Oil Company and the Louisiana Oil Refining Company wrongfully and without any right whatsoever have entered on said tracts, drilled a well thereon and extracted oil therefrom. The prayer of the petition is for the recognition of the title of the United States, for an injunction restraining the defendants from further trespassing and taking of oil from the land and for an accounting for oil already taken.

The answers of all of the defendants are in substance the same, and in them the defendants deny the existence of any such tracts of land as Lots Two (2) and Three (3) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, and aver that the land so described is a part of Fractional Northwest Quarter (NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, which was acquired by defendant, Charles J. Greene, by patent from the United States under its homestead laws prior to the making of the survey, which attempted to create out of defendant's land the aforesaid lots. Defendants further aver that the Fractional Northwest Quarter (NW¼) of Section 27, Township 20 North, Range 16 West, borders on and adjoins Ferry Lake, a navigable body of water, and "that at the date of the issuance of said patent, in accordance with the official field notes and plat of survey of said General Land Office aforesaid, and the entry thereof, by defendant patentee, the same bordered on said lake, a navigable body of water,

and that said lake, or navigable body of water, was and is the boundary line of said Fractional Northwest Quarter of Section 27, Township 20, Range 16, of Caddo Parish, Louisiana, aforesaid, and that the same was not bounded by any meander line; the actual boundary line of said Fractional Northwest Quarter of Section 27, as patented by the United States to defendants, bordering on said navigable body of water, extended and was and is bounded and limited, by the ordinary or mesne high water of said Ferry Lake, at the time of the admission of the State of Louisiana into the Union, leaving no land in the ownership of the United States between said meander line and the ordinary high water line of said lake, or navigable body of water, and that the Department of the Interior was without jurisdiction, power, or authority to cause said tracts of land, in controversy, to be surveyed."

Defendants further aver that the United States had, prior to the bringing of the aforesaid suit, disclaimed any ownership of the land that it is now suing for, and that defendant, Greene, acquired same in good faith and upon the strength of the official and approved survey made by the officers of the United States showing the land patented to him to front and abut on Ferry Lake.

Defendants pray for the rejection of plaintiff's claim, and, in the alternative, that if the plaintiff's ownership of the land should be recognized, defendants pray for reimbursement of the expenses and costs incurred by them in drilling for and producing oil from the land.

In the District Court there was judgment in favor of the United States, recognizing it as the owner of the land and ordering the defendants to account for the value of the oil taken from it, less a part of the cost of drilling the well. The Circuit Court of Appeals reversed the judgment and dismissed the suit, from which decision the United States has appealed to this Court.

THE FACTS.

The facts of the case as found by the Circuit Court of Appeals are thus stated in its opinion:

> "The entire township 20 was originally surveyed by one Warren, in 1839. His plat of township 20 showed Ferry Lake as the northerly boundary of fractional lot 27. No land is indicated on said plat as lying between the meander line of said lake and the waters thereof. In 1908 the presence of oil in adjacent territory caused the President to withdraw all lands of the United States in this and other townships from any manner of appropriation, and a resurvey of this township was directed where it bordered on Ferry Lake and its arms. This survey determined that the mean high water level of Ferry Lake at the time of said Warren survey in 1839, as well as in 1812, when Louisiana became a State, was 173.09 feet above the gulf level. That Warren so recognized it and that his section lines terminated at the lake at this elevation, but that in meandering the shore of said lake in front of said section 27 Warren's courses and distances do not follow the shore of the lake, but run over high ground which, at its farthest point is about 1200 feet from the true shore line. The omitted land is intersected with

several ravines running to Ferry Lake. It contains 97.64 acres divided into lots 2, 3 and 4 of section 27 and fractional section 23, as per said plat of survey of March 28, 1917; the lots 2 and 3 contain 65.77 acres; No. 4 contains 14.13 acres and section 23, 17.44 acres. The acreage of section 27 as surveyed by Warren in 1839 was 468.87 acres. The acreage claimed by the defendants in case No. 3523 to be included in the Warren survey and the patent thereunder under which they claim is that in lots 2 and 3 and about ½ of the 16.61 acres described as the fractional section 23 in the Kidder survey, or 74.08 acres. That claimed by the defendants in No. 3525 is lot No. 4 of section 27 and the rest of said fractional section 23, or 23.56 acres. While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases.

"The cases were referred to a master, who took testimony and made a report, finding that the land in controversy had been omitted from the Warren survey by manifest error, and that the government was the owner thereof. He also found that the government was entitled to recover the value of the oil received therefrom, less all costs of extracting the same. The defendants excepted to the report, and the government to so much thereof as allowed to defendants the cost of raising said oil.

"The Court overruled all exceptions and rendered a decree in favor of the government, in accord with the master's report.

"The defendants appealed, assigning error in the finding that the government was the owner of the land, and the government has taken a cross appeal

from the finding that defendants were to be credited with the cost of raising said oil.

"There was no dispute as to the facts. The only evidence on which the master predicated his finding that the patents, including the northwest and northwest fractional quarters of said section 27 did not cover the land sued for by the government, was that the resurvey of township 20 by Kidder and a reproduction of the meander line of the Warren survey, according to the calls in Warren's field notes, did not follow the ordinary high water elevation of 173.09 feet above gulf level, but ran over high ground at distances varying from a few feet to about ¼ of a mile from said 173.09 feet contour. Warren's plat does not show any meander line, but gives the waters of Ferry Lake as the boundary of the fractional sections bordering thereon. The section lines of these sections are conceded to reach the ordinary high water level, as determined by Kidder and the scientific experts to have existed at the time of Warren's survey.

"Kidder's survey was made for the purpose of marking the ordinary high water level of Ferry Lake in 1839, at the time of Warren's survey. This elevation was determined by careful examination and by ecological and geological experts, and a meander line carefully run at 173.09 feet above gulf level, that having been fixed as the ordinary high water level existing in 1839.

"The plat of this survey also traces the meander line as given by the calls of Warren's field notes.

"Both meander lines thus marked, beginning on the west side of section 27, were generally in a

northeast direction to the most northerly point of the land on the south shore of Ferry Lake, as marked on the Kidder and Warren plats, respectively, and then run in a southerly and southeasterly direction to section 26 on the east.

"The additional land shown on Kidder's plat is a strip bounded on the north by a broken line, forming roughly an arc, with the courses of Warren's meander line as its chord. Its greatest width is about one-quarter of a mile; its length is about one mile.

"The evidence shows that the land in controversy was regarded as conveyed by said patents; that parts of it were cultivated and a dwelling house was erected on the part sued for in the Greene case, near the lake. The Warren plat referred to in said patents indicated Ferry Lake as the northern boundary of the land conveyed by each patent.

"The only apparent reason for the departure of the traverse line from the shore of the lake is that the land was broken with ravines running down to the lake; that these ravines in times of very high water were partially flooded and the convenience of the surveyor may have occasioned a failure to follow the water level, the land left out being at the time of little value. In other parts of this survey the Warren meander line, as reproduced by Kidder, in places runs into the lake and includes within its calls, as land, small portions of the lake.

"There is no suggestion of any purpose on the part of Warren not to include all the land up to the water of the lake in this section as surveyed; and if the land described in the Kidder survey as outside

of Warren's traverse line, in section 27, is included it still leaves section 27 a fractional section.

"The evidence of the government to the effect that the traverse line was a manifest error is only the expression of an opinion, based solely on the fact that it runs from the margin of the lake on high ground in the meander heretofore described. This opinion is based on an absence of explanation given for the discrepancy, and not on any evidence of an intention to make the line one of boundary, and to depart from the general rule. It is conceded that the survey as a whole (except in the case where a large tract was clearly omitted where Jeems Bayou and Ferry Lake unite) follows generally the contour of the lake and makes the lake the boundary.

"It is also not disputed that as to the land sold by the government in section 27 the survey referred to in the patent represented the lake as its boundary."

The facts as thus stated by the Circuit Court of Appeals are plain from the record, and are incontrovertible. The statement needs no elaboration and we shall attempt none. We may, however, summarize the facts as thus found by stating that the evidence in the case plainly shows that at the time Greene settled on the land and at the time he obtained his patent the only existing survey of the land in question was the official plat of township 20 north, range 16 west, Louisiana Meridian, approved August 31, 1839, delineating the survey of A. W. Warren; that this survey and map show the fractional Northwest Quarter of Section 27 to border on Ferry Lake; that Greene intended to acquire the land bordering on Ferry Lake and thought that

he had acquired it under his patent; that he built a house upon it, cultivated a portion of it and planted an orchard upon it and treated it as his own; that according to the testimony of the plaintiff's own witnesses the total area claimed to have been omitted from Warren's survey of Sections 27 and 28, as determined by the exact calculations of the government surveyors some eighty years afterwards, was the insignificant amount of 97.64 acres, and that the land which it is asserted was omitted from Warren's survey is broken by ravines and was at the time of Warren's survey worthless.

ARGUMENT.

If Your Honors Please:

From the foregoing statement of facts, as disclosed by the record and as found by the Circuit Court of Appeals, it is apparent that the meticulous resurveys made by Kidder, who was the United States Supervisor of Surveys, and by his associates, show neither fraud nor gross error in the Warren survey of the tract of land involved in this suit, nor in his survey as a whole of the land adjacent to Ferry Lake. On the contrary, when the conditions under which Warren was compelled to work are considered in connection with the broken and irregular character of the land which it is claimed he omitted from his survey and with the more or less primitive instruments with which he had to work, it must be conceded that on the whole his work was notably well done and remarkably accurate. The accuracy and faithfulness of Warren's work as a whole was recognized by Kidder himself in his report to the Commissioner of the

General Land Office, of which as a public and official document (being a report of the Supervisor of Surveys to the Commissioner), this Court will take judicial cognizance. This report is reproduced in full in the transcript of suit No. 160, entitled *United States of America v. C. W. Lane, et al.* (See record in No. 160, pages 192, *et seq.)*; and in it Mr. Kidder said:

> "With only one exception the original section lines as terminated upon the border of Ferry Lake show a proper recognition of the mean high water elevation of the raft period. I would not criticise the surveyor's judgment in the location of but one meander corner in the entire township and the meander lines along the lake front in Sections 1, 5, 8, 11, 17, 20, 26, 28, 31, 33 and 35 are reasonably correct.
>
> "The faithfulness of the early surveyors deputized by the United States to the performance of the great trust of establishing and marking for all time the lines defining the rights of her land patentees has been well demonstrated by the positive identification and recovery of the original lines after a period far beyond the span of the average human life. The deputy surveyors were called upon to explore and map a wild and remote virgin forest and swamp, to transport themselves and equipment by primitive methods, and to subsist themselves largely by hunting and fishing as best they could."

Moreover, in his testimony in the present case, Kidder admitted that Warren's meander lines in the northeast corner of Section 27 and also in Section 28 to the west of the land involved in this suit approximate very closely to the

contour line 173.09, which Kidder testifies was the proper contour line of Ferry Lake at the time of Warren's survey. (Record, page 121).

With all due respect, therefore, for the able surveyors and the learned ecologists and geologists who testified for the United States in this case and who criticised the Warren survey as erroneous and inaccurate at certain points where it varies from the present boundary of Ferry Lake, while admitting its general accuracy and faithfulness taken as a whole, we submit that Warren's map is much more likely to be a faithful picture of the outlines of Ferry Lake as they existed in 1839 and as he actually saw them at the time, than is the map of Kidder and his associates, who have attempted to reconstruct in their minds the conditions of eighty years ago and who have presented to the Court this theoretical reconstruction of what conditions should have been eighty years ago, in opposition to Warren's delineations of what they actually were as revealed to his physical vision.

We repeat that Warren's survey, made eighty years ago, is entitled to more weight as evidence of what conditions actually were eighty years ago than are the deductions of Kidder and the scientists co-operating with him, which deductions were arrived at by reasoning from facts and conditions found by them to exist in 1919, just as the evidence of a reputable and disinterested eye-witness as to how a crime was committed is entitled to more weight than the deductions of detectives and psycho-analysts, who did not

witness the commission of the crime, but reconstructed the scene from facts found by them some time later. Kidder's repeated declaration that Warren's survey was manifestly erroneous, was nothing more or less than the statement of a legal conclusion and meant nothing more than that Warren's survey, portraying conditions in 1839, did not agree in all respects with Kidder's survey portraying conditions in 1919. Under Kidder's theory, Warren's survey would have been "manifestly erroneous" if Warren had omitted nine acres, just as he considered it "manifestly erroneous" because, as he contends, Warren omitted 97.64 acres of broken and worthless ground in meandering the frontage of two whole sections bordering on Ferry Lake.

However, the correctness or incorrectness of Kidder's deductions as to the "manifest error" which he asserts Warren made in surveying the Northwest Quarter of Section 27 is really immaterial here, as it is clear, from an examination of a map of Warren's survey and a comparison of it with Kidder's survey eight years later, that Warren **intended** to delineate Ferry Lake; that he **intended** to embrace in the fractional Northwest Quarter of Section 27 all of the land lying between the north line of the Southwest Quarter of Section 27 and Ferry Lake; and it is obvious, as a matter of common sense and general information, that when Greene applied for a patent on the Northwest Quarter of Section 27 he was acting under the belief that he was acquiring the land adjoining Ferry Lake, on which he had actually settled and built a house and planted an orchard; and it is equally obvious that the government officials who

issued the patent to Greene believed about the matter as he did. When Greene settled on the land in controvrsy its chief value to him was its proximity to Ferry Lake, and it was the land adjoining Ferry Lake that he wanted to acquire and attempted to acquire; in other words, when Greene went to Ferry Lake and selected the land upon which he desired to settle and acquire a homestead, he actually selected the land in controversy in this suit, whether it be described as a fractional Northwest Quarter of Section 27 (as Warren shows it on his map), or whether it be described as Lots 2 and 3 of Section 27; and, in order to obtain a patent on it, he referred to the only official index for the proper description of the land that was at the time in existence, which official index was Warren's survey of Ferry Lake, and his reference to Warren's survey showed that the land was described as the fractional Northwest Quarter of Section 27.

The position of the United States in this suit is that of having induced Greene to settle on and improve the land in controversy under its homestead laws, of having advised him through its proper authorities that the description of the land he had selected under the homestead laws and upon which he had settled and built a house and planted an orchard, was the fractional Northwest Quarter of Section 27, and of having granted him a patent to the fractional Northwest Quarter of Section 27, which he and the government officials who granted the patent believed at the time embraced and covered the land he had actually settled upon and improved, and of nevertheless seeking in this suit to take away from Greene the identical land it induced him

to settle upon in reliance on the verity of its own official records by claiming that its own records were erroneous and by seeking to correct the errors in its own records to the prejudice of Greene and those holding under him. If this suit were between private individuals we do not believe that any Court would have given a moment's serious consideration to the plaintiff's claim, and the fact that the plaintiff is the United States should not affect the result of the suit in the slightest. The United States is just as much bound to observe principles of fair dealing and equity in asserting its rights against Greene in this case as a private individual would be, and in a Court of equity it should be as completely precluded from depriving Greene of the land he has acquired from it in good faith and in reliance upon the verity of its own records as an individual would be precluded under similar circumstances. Under the facts in this case, which are practically undisputed, there is no basis in equity or law for plaintiff's claim of ownership of the land on which it has induced Greene to settle under its homestead laws, which it held out to him as being embraced in the description of the land conveyed by his patent, which description was taken from its own and only map and survey; and the Circuit Court of Appeals so held.

It would, we think, be a useless waste of time to cite to this Court and quote at length from authorities to the effect that Ferry Lake and not its meander lines, as shown on Warren's survey, is to be taken as the boundary of Greene's land, but we think it worth while to reproduce here that

part of the opinion of the Circuit Court of Appeals which deals with the law of the case after reciting the facts as found by it:

> "The question, therefore, is:
>
> "Did the evidence in this case show that there was such a mistake in the Warren survey that the government can now have the same corrected against the present owners of the land conveyed by its patent?
>
> "These patents respectively conveyed the land mentioned therein 'according to the official plat of survey of said lands returned to the General Land Office by the surveyor general.' (This was the Warren survey.)
>
> "This constituted such plat a part of the deed, 'and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself.' Cragin v. Powell, 128 U. S., 693; McIver's Lessee v. Walker, 9 Cranch, 173, 177; Jeffries v. East Omaha Land Co., 134 U. S., 178, 194-5; Chapman, et al., v. St. Francis Levee District, 232 U. S., 186, 197.
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> "The general rule, well established by decisions of the Supreme Court of the United States, is that where a meander line is run, if lands are described as bordering on a stream or body of water, the meander line is not a boundary, but the waters themselves constitute the boundary—the meander line being intended to ascertain the approximate acreage which is to be paid for. Railroad Co. v. Schurmeir, 7 Wall., 272, 286; Hardin v. Jordan, 140 U. S., 371, 380.

"The patent to the fractional part of section 27 held by defendants in the Greene case called for 147.25 acres The land claimed by the government as outside of this acreage is 65.77 acres, and the additional land involved in section 23 is about 8.30 acres, so that the land claimed by defendants is about fifty per cent in excess of the acreage given in said patents. The acreage covered by the patent under which defendants claim in the Loucks case is 123.49½ acres, and the land claimed by the government as outside of this acreage is 14.13 acres, so that the land claimed by defendants in the Loucks case is not quite one-fifth of the acreage named in the patent.

"The case is well within the rule that a meander line is not to be considered as a line of boundary, where the plat of survey shows a body of water as the boundary; but that there must be some absence of the body of water in the descriptions where shown on the plat, or another body of water which satisfies the natural object shown, although misnamed, or a notation of intervening land, such as a marsh, so that the plat when applied to the ground shows either a clear mistake as to the existence of the natural object or a purpose not to call for it as a boundary.

"The case of Mitchell v. Smale, 140 U. S., 406, 412, clearly demonstrates the above principle. There a fractional lot calling for 4½ acres was shown on the plat of survey as bounded by a lake. There was a point containing 25 acres outside of the meander lines, projecting into the lake. This 25 acres was subsequently surveyed by the Land Department and patented to another purchaser. The second patent

was held invalid and the land decided to have been conveyed by the first patent. The Court said:

" 'We think it a great hardship, and one not to be endured, for the government officers to have new surveys and grants to the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusion of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deducted therefrom, and the surrounding fractional lots adjoining and bordering on the

same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow.'

"That acreage is not controlling in limiting the grant is clearly shown by the above case. There are many others of the same purport.

"In Johnson v. Johnson, 24 L. R. A. (N. S.), (Idaho), 1251, the patent called for a tract of 86.06 acres. The natural object was held to be the boundary and to carry with it 143 acres.

"Where the survey mentioned in a patent calling for 80 acres depicted a lake as a boundary, and the meander line did not coincide with the lake shore, the lake was decided to be the boundary and the patent was held to convey 100 acres lying between the meander line and the lake. Barringer v. Davis, 120 Iowa, 428, 120 N. W., 65.

"See also Lindsey v. Hawes, 2 Black, 554, 560; Brown v. Huger, 21 How., 305; St. Clair v. Livingston, 23 Wall., 46, 63; Grand Rapids & Indiana R. R. Co. v. Butler, 159 U. S., 87; St. Anthony Falls Water Co. v. Board, etc., 168 U. S., 349; Chapman & Dewey v. St. Francis Levee District, 232 U. S., 186, 197.

"The decisions holding the meander line to be one of boundary all recognize the general rule to be as

above stated and rest on exceptions thereto. In the case of Horne v. Smith, 159 U. S., 40, the plat called for the Indian River as a boundary. There was a watercourse where the plat depicted the river and the mistake was in calling it Indian River. It was held that this watercourse (not a meander line) was the boundary intended and that the patent did not include a large tract of land, never surveyed, which lay between the bayou and Indian River.

"In Niles v. Cedar Point Club, 175 U. S., 300, the survey showed a tract of marsh or swamp lands beyond the meander line; the patent, therefore, was held to terminate at the meander line and not to carry the swamp lands lying between it and Lake Erie.

"In the present cases the plat of survey shows nothing as the meander line but the shore line of Ferry Lake.

"Where a plat called for a lake and there was no lake in front of the so-called meander line, but only one located outside of the side lines of the grant, it was held that the so-called meander line must be taken as the boundary instead of shifting the entire grant. French Glenn Live Stock Co. v. Springer, 185 U. S., 35.

"Upon the same principle, coupled with evidence of the fraudulent character of the survey, there being no lake or body of water at or near the spot indicated on the plat of survey, rests the decision in Security Land & Exploration Co. v. Burns, 193 U. S., 182, and also Lee, Wilson & Co. v. United States, 245 U. S., 34.

"The decision of the Supreme Court of the United States, in Producers' Oil Co. v. Hanzen, 238 U. S., 325, affirming the decision of the Supreme Court of Louisiana in 132 La., 691, lays down the general principle and illustrates the exceptions. There Bristol, a surveyor, made a survey of parts of section 3, 4, 9 and 10 of this township 20, and referred in his field notes to a spur of marsh extending 'cut north.' It was also admitted that the land in controversy was high land when the Bristol survey was made. This case establishes:

" 'As a general rule meanders are not to be treated as boundaries, and when the United States conveys a tract of land by patent, referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up to the water line.

" 'Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

" 'Where, as in this case, the survey of improved lands was made at the express request of the occupant to whom they were subsequently patented, and the grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those within the traverse lines, the patent of the United States conferred no riparian rights, but simply conveyed the specified number of acres.'

"That the government has the right to make new surveys and correct errors in former ones does not

in any way limit the above general rule or create a different rule where such new survey is made.

"The right of the government to make such new surveys is clear, but where the United States has previously parted with the title a new survey does not conclude a prior purchaser from asserting whatever title he has acquired by his older patent as against one claiming under the new survey. Cragin v. Powell, 128 U. S., 696; Hardin v. Jordan, 140 U. S., 371, 400; Mitchell v. Smale, 140 U. S., 406; Hardin v. Shedd, 190 U. S., 508.

"This limitation on the effect of a new survey is recognized in the cases asserting the right of the government to make it. Thus, in Kirwan v. Murphy, 189 U. S., 35, while the right to order a new survey is upheld, it is expressly stated that the right of the existing grantee could be thereafter asserted.

"To the same effect is the decision in Lane, Secretary, v. Darlington, 249 U. S., 331.

"We think that the present cases are governed by the general rule above laid down and that the patents to said section 27 convey all of the land to the waters of Ferry Lake.

"The side lines of said section 27 terminate at the lake. The lake lies in the same relative position to said section as the Warren plat of survey indicates. It lies from a few feet to less than a quarter of a mile distant from Warren's meander line as now laid on the ground on the new survey. The omitted land was at the time of little value and broken by ravines. There is no evidence of any intention to grant only to the traverse lines, but the apparent purpose was to include all the land to the lake in

the survey. That in each of these cases the meander line, according to its calls, is not to be treated as a boundary; but that the patents referring to an official plat which shows the land granted as bordering on the lake, the patentee took title to the water line.

"The decree in each case is reversed on the appeal therein, with directions that the bill of complaint be dismissed by the District Court. Each cross appeal is dismissed."

We respectfully submit that the judgment of the Circuit Court of Appeals is correct, and should be affirmed.

Respectfully submitted,

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